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in part, under an agreement at any time prior to the date of completion.

(oo) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(pp) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(qq) *Unobligated balance* means the portion of the funds authorized by DOL that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(rr) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(ss) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 95.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 95.4.

§ 95.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum grant-wide uniformity, excep-

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tions from the requirements of this part shall be permitted only in unusual circumstances. DOL may apply more restrictive requirements to a class of recipients when approved by OMB. DOL may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by DOL.

§ 95.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, other non-profit organizations, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and codified by DOL at 29 CFR part 97 or its successor.

Subpart B—Pre-Award Requirements

§ 95.10 Purpose.

Sections 95.11 through 95.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 95.11 Pre-award policies.

Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 95.12 Forms for applying for Federal assistance.

(a) Applicants shall use the SF-424 series or those forms and instructions prescribed by DOL.

(b) The applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was

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subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from DOL or the *Catalog of Federal Domestic Assistance*. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

§ 95.13 Debarment and suspension.

Recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.'s 12549 and 12689, "Debarment and Suspension" codified by DOL at 29 CFR part 98. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 95.14 Special award conditions.

If an applicant or recipient:

- (a) Has a history of poor performance,
- (b) Is not financially stable,
- (c) Has a management system that does not meet the standards prescribed in this part,
- (d) Has not conformed to the terms and conditions of a previous award, or
- (e) Is not otherwise responsible,

DOL may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: The nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 95.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205), declares that the metric system is the preferred measurement system for U.S.

trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. DOL shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

§ 95.16 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247-254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 95.17 Certifications and representations.

Unless prohibited by statute or codified regulation, DOL requires recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis only, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.